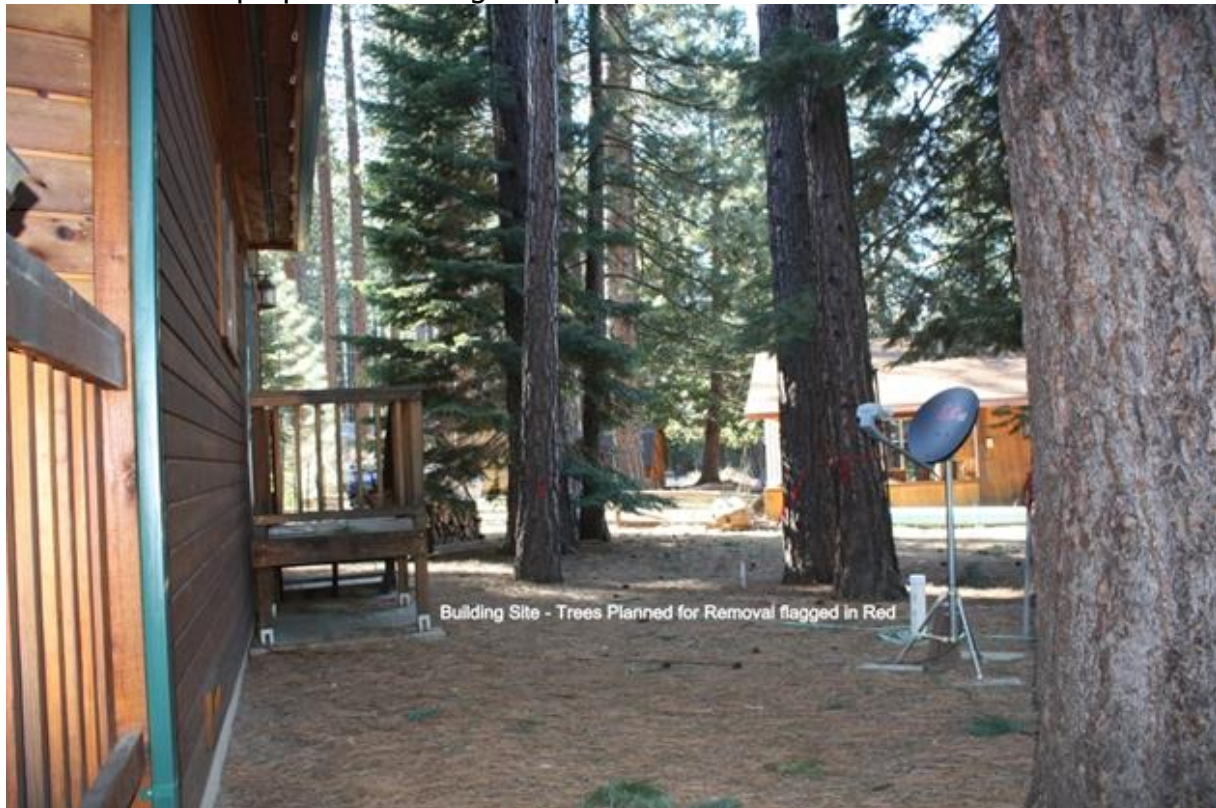




Case Study: Rasmussen Property

Les and Penny Rasmussen own a 0.29 acre residential lot in the golf resort town of Graeagle, Plumas County, California. The lot and entire subdivision is zoned 7R (Single Family Residential 1/7 acre), and is part of a large subdivision created in 1959.

In order to construct a detached garage on their parcel, the Rasmussen's sought an RPF to prepare a Less Than 3-Acre Conversion Exemption to facilitate removal of 7 trees within the proposed building footprint.



Upon the RPF's site inspection, basalt flakes were noted on the surface of the lot, and the RPF required that the site be formally surveyed an Archaeologist prior to any additional work being done regarding the Conversion Exemption. During May and June 2013, an Archeologist conducted a formal site evaluation including excavation. The RPA's report indicates the site is considered significant as per 14 CCR 895.10, and likely extends throughout the subdivision according to the RPA. The presence of the significant archaeological resource negates the Rasmussen property's eligibility for a Less Than 3-Acre Conversion Exemption. Discussions with the Department during the summer of 2013 indicated a full THP would be necessary to legally remove the 7 trees from the residential lot.



Since the exemption is disallowed, a Timberland Conversion Permit (TCP) must also be prepared and submitted, as well as a CEQA document to support the TCP.

According to Plumas County Planning Department, a Mitigated Negative Declaration (MND) would be required due to the presence of the archaeological site. An MND, if prepared by the County, or by a Consultant on behalf of the County, would cost a flat rate of \$2695 to \$5152 (including Environmental Health, Public Works, and Engineering costs) *PLUS* \$101.00 per hour.

If the MND were prepared by the State, the costs would very likely be higher.

The Plumas County Planning Department indicated they do not have time to prepare the MND prior to the onset of winter 2014/2015.

They do not typically prepare MNDs for a timberland conversion. Since the proposed construction/land use is in accordance with the zoning of the lot, a timberland conversion would be considered ministerial in nature, and they have never conducted an MND for such purposes.

The initial cost of the archaeological survey and report, plus the anticipated costs of the THP, TCP, and MND, the Rasmussen's are faced with potentially paying upwards of \$25,000 in permitting fees in order to build a garage next to their existing home.

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Mr. and Mrs. Rasmussen have made the decision to not proceed with their planned construction at this time.

The Archeologist's suggested mitigation for the archaeological resource was that the garage construction site be overlain with geotextile fabric and "capped" with fill prior to construction. The Rasmussen's have no issue with carrying out the suggested mitigation measures.

"Timberland" as per PRC 4526, the term refers to "...land, other than land owned by the federal government and land designated by the board as experimental forest land, which is available for, and capable of, growing a crop of trees of a commercial species used to produce lumber and other forest products, including Christmas trees."

Is a residential lot, zoned by the County for residential purposes, properly defined as "timberland" by the State?

How useful is a Cumulative Impacts Assessment or MND regarding removal of 7 trees from a 0.29 acre residential subdivision lot that is zoned according to the County's General Plan, and for which residential uses are the highest and best use?



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Possible Solutions

1. Does this site truly meet the definition of significant under the Forest Practice Rules? If it does not, then a conversion exemption would apply, and significantly reduce the burden on the landowner. A case could be made that the mitigation requested by the archeologist would reduce the impact to less than significant. Alternatively, the Board could implement regulation that made this specific.
2. The Board could choose to amend its conversion regulations to recognize that land zoned for residential purposes has already received local approval and review, and that an exemption would apply in such instances.

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4584. Exempt activities. Upon determining that the exemption is consistent with the purposes of this chapter, the board may exempt from this chapter, or portions of this chapter, a person engaged in forest management whose activities are limited to any of the following:

(g) (1) The one-time conversion of less than three acres to a non-timber use. A person, whether acting as an individual or as a member of a partnership, or as an officer or employee of a corporation or other legal entity, shall not obtain more than one exemption pursuant to this subdivision in a five-year period. If a partnership has as a member, or if a corporation or other legal entity has as an officer or employee, a person who has received this exemption within the past five years, whether as an individual or as a member of a partnership, or as an officer or employee of a corporation or other legal entity, then that partnership, corporation, or other legal entity is not eligible for this exemption. "Person," for purposes of this subdivision, means an individual, partnership, corporation, or other legal entity.

(2) (A) Notwithstanding Section 4554.5, the board shall adopt regulations that do all of the following:

(i) Identify the required documentation of a bona fide intent to complete the conversion that an applicant will need to submit in order to be eligible for the exemption in paragraph (1).

(ii) Authorize the department to inspect the sites approved in conversion applications that have been approved on or after January 1, 2002, in order to determine that the conversion was completed within the two-year period described in subparagraph (B) of paragraph (2) of subdivision (a) of Section 1104.1 of Title 14 of the California Code of Regulations.

(iii) Require the exemption pursuant to this subdivision to expire if there is a change in timberland ownership. The person who originally submitted an application for an exemption pursuant to this subdivision shall notify the department of a change in timberland ownership on or before five calendar days after a change in ownership.

(iv) The board may adopt regulations allowing a waiver of the five-year limitation described in paragraph (1) upon finding that the imposition of the five-year limitation would impose an undue hardship on the applicant for the exemption. The board may adopt a process for an appeal of a denial of a waiver.

(B) The application form for the exemption pursuant to paragraph (1) shall prominently advise the public that a violation of the conversion exemption, including a conversion applied for in the name of someone other than the person or entity implementing the conversion in bona fide good faith, is a violation of this chapter and penalties may accrue up to ten thousand dollars (\$10,000) for each violation pursuant to Article 8 (commencing with Section 4601).

4621. Application for conversion; procedure, form, fees and content to be prescribed.

(a) Any person who owns timberlands which are to be devoted to uses other than the growing of timber shall file an application for conversion with the board. The board shall, by regulation, prescribe the procedures for, form, and content of, the application. An application for a timberland conversion permit shall be accompanied by an application fee, payable to the department, in an amount determined by the board pursuant to subdivision (b).

(b) The board shall establish, by regulation, a system of graduated timberland conversion permit fees to finance the cost of administering this article.

4621.2. Proposed alternate use; information; findings required for approval.

(a) If the timberlands which are to be devoted to uses other than the growing of timber are zoned as timberland production zones under Section 51112 or 51113 of the Government Code,

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the application shall specify the proposed alternate use and shall include information the board determines necessary to evaluate the proposed alternate use. The board shall approve the application for conversion only if the board makes written findings that all of the following exist:

- (1)** The conversion would be in the public interest.
 - (2)** The conversion would not have a substantial and unmitigated adverse effect upon the continued timber-growing use or open-space use of other land zoned as timberland production and situated within one mile of the exterior boundary of the land upon which immediate rezoning is proposed.
 - (3)** The soils, slopes, and watershed conditions would be suitable for the uses proposed if the conversion were approved.
 - (b)** The existence of an opportunity for an alternative use of the land shall not alone be sufficient reason for conditionally approving an application for conversion. Conversion shall be considered only if there is no proximate and suitable land which is not zoned as timberland production for the alternate use not permitted within a timberland production zone.
 - (c)** The uneconomic character of the existing use shall not be sufficient reason for the conditional approval of conversion. The uneconomic character of the existing use may be considered only if there is no other reasonable or comparable timber-growing use to which the land may be put.
 - (d)** In the event that the board delegates its responsibilities under this section to the director pursuant to Section 4627, the director shall make the written findings required by subdivision (a).
- (a). In the event that the director denies a conversion, the applicant may request a hearing before the board within 15 days of the denial. The hearing shall be scheduled within 60 days from the filing of the appeal.

4622. Conditions for approval of application. Approval of an application for conversion shall be conditioned upon the granting of the necessary rezoning or use permit if rezoning or a use permit is required. Except as provided in Section 4584, all timber shall be cut pursuant to an approved conversion pursuant to Section 4581, excluding requirements for stocking and methods of silviculture, except that the timber harvesting plan required by that section need not be prepared by a registered professional forester, and no timber operations shall commence until the granting of such rezoning or use permit as may be required and until the timberland conversion permit is recorded in the county recorder's office in each county wherein the timberland to be converted is located.

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Significant Archaeological or Historical Site means a specific location which may contain artifacts, or objects and where evidence clearly demonstrates a high probability that the site meets one or more of the following criteria:

- (a) Contains information needed to answer important scientific research questions.
- (b) Has a special and particular quality such as the oldest of its type or best available example of its type.
- (c) Is directly associated with a scientifically recognized important prehistoric or historic event or person.
- (d) Involves important research questions that historical research has shown can be answered only with archaeological methods.
- (e) Has significant cultural or religious importance to Native Americans as defined in 14 CCR § 895.1.

Native American Archaeological or Cultural Site means any archaeological or other cultural resource that is associated with Native Americans. These sites must be identifiable by a specific physical location containing specific physical attributes. Native American archaeological or cultural sites include but are not limited to: village sites, camp sites, petroglyphs, prehistoric trails, quarries, milling stations, cemeteries, ceremonial sites or traditional cultural sites and properties

929.7, 949.7, 969.7 Determination of Significance [All Districts]

(a) A determination of significance shall be made for an identified archaeological or historical site within the site survey area on a THP, or Emergency Notice by a person who satisfies the requirements specified in 14 CCR § 929.4 [949.4, 969.4] if damaging effects from timber operations cannot be avoided.

(b) The determination of significance shall:

(1) Be based upon criteria defined for significant archaeological or historical sites in 14 CCR § 895.1

(2) Utilize any information provided by Native Americans, archaeological, historical or ethnographic data pertinent to the region and to the cultural resource, and the physical characteristics of the archaeological or historical site.

(c) If required by subsection (a), a preliminary determination of significance shall be made by the RPF or the RPF's supervised designee and provided in the Confidential Archaeological Addendum.

(d) Where the Director determines that timber operations may cause a substantial adverse change to a significant archaeological or historical site and the RPF and the Director cannot agree upon protection measures, a professional archaeologist provided by the THP submitter shall make a survey and prepare a report on the potentially affected site or sites and the potential impacts of the proposed timber operations. The part of the report that relates to archaeological sites is confidential. This report, if it discusses impacts on Native American archaeological sites, shall be provided by the Director to Native Americans and the NAHC. This report shall contain recommendations for mitigation, the elimination of impacts, or for the reduction of impacts to avoid or prevent substantial adverse change to significant archaeological or historical resources. The report shall meet the standards of the Preservation Planning Bulletin, Number 4, December 1989 (Office of Historic Preservation), entitled Archaeological Resource Management Reports (ARMR): Recommended Contents and Format. The Director shall make the final determination of significance and substantial adverse change based on advice of a professional archaeologist.